IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 199 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

APAR INDUSTRIES LTD.

Appearance:

MRS SWATI SOPARKAR for Petitioner.

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 05/12/2002

ORAL JUDGEMENT

This is a petition filed by the petitioner-company Apar Industries Limited for sanction of the scheme of arrangement and compromise by way of conversion of 10% redeemable Cumulative Preference Share Capital (Series II) into 10% Non-convertible Redeemable Debentures of the petitioner company under Section 391 of the Companies Act, 1956.

2. The petition gives a detailed explanation as regards the need and the purpose of the scheme. The main objective of the scheme is said to be to ease out the pressure on the liquid funds of the petitioner-company by deferring the redemption of the Preference Share Capital.

3. The Scheme of Arrangement was put before the meetings of Equity Shareholders, Preference Shareholders (Series-I and Series-II), Secured Creditors and Unsecured Creditors of the petitioner-company. The Secured Creditors of the petitioner-company had suggested certain modifications and the company having accepted the modifications put the same before the said meetings. The modified scheme was approved unanimously in all the meetings. Hence, the modified scheme is put before this Court to be sanctioned.

4. After the petition was admitted, it was advertised in the newspapers (Indian Express Vadodara edition dated 10.11.2002 and Loksatta-Jansatta Vadodara edition dated 10.11.2002). No one has come forward before this Court opposing the sanction of the Scheme of Arrangement.

5. Notice of the petition has been served upon the Central Government and Smt. Parinda J. Davawala, Addl. Central Govt. Standing Counsel appearing for the Central Government has put on record the letter dated 4.12.2002 wherein it is indicated that the Central Government has no objection in sanctioning the Scheme of Arrangement and has left it to this Hon'ble Court to consider the petition on merits for the purpose of sanctioning the same. It has however pointed out a mistake as regards the number of preference shareholders (Series-II). An affidavit has been filed today by the petitioner-company clarifying the position and amendment is sought for to carry out the corrections. Having been satisfied that this is an inadvertent mistake on the part of the petitioner, the amendment is hereby granted.

6. Heard Mrs. Swati S. Soparkar, ld. advocate appearing for the petitioner-company. Having gone through the petition and considered the submissions made, I am satisfied that the proposed Scheme of Arrangement could be made between the petitioner-company and its shareholders and creditors. However, a specific reference is required to be made to Clause 5.5 of the Scheme of Arrangement, which reads as under:-

20% of face value (Rs.200/- per NCD) on 31st March, 2007 (Rs. 5 crores);

20% of face value (Rs.200/- per NCD) on 31st March, 2008 (Rs. 5 crores);

20% of face value (Rs.200/- per NCD) on 31st

March, 2009 (Rs. 5 crores);

20% of face value (Rs. 200/- per NCD) on 31st March, 2010 (Rs. 5 crores); and

20% of face value (Rs. 200/- per NCD) on 31st March, 2011 (Rs. 5 crores).

It is further stated in Clause 5.8 of the said Arrangement that "In terms of Section 117C read with clarification issued by the Deptt. of Company Affairs vide its General Circular No. 9/2002 dated 18/4/2002, a Debenture Redemption Reserve (DRR) of total amount of Rs. 62,500,000, which is equal to 25% of the aggregate face value of NCDs, shall be created out of the profits of the Company, beginning from the financial year 2002-2003 over a period until the debentures are fully redeemed in such amounts as the Board of Directors shall determine from time to time, and the DRR amount shall be utilised for redemption of these NCDs only."

7. It is, therefore, revealed from the aforesaid two Clauses of the Scheme, that the Debentures would be redeemed out of the profit, and if the adequate profit is not there as contemplated, it is difficult for the Company to act in consonance with the Scheme which is sought to be sanctioned by this Court. It is, therefore, open for the concerned parties to approach this Court under Section 392 of the Companies Act, 1956 if the Scheme does not fall in terms of arrangement which is placed before this Court. Subject to these observations, the modified Scheme of Arrangement (Annexure-E to the petition) is hereby sanctioned and the prayers in terms of Para 24 of the petition is granted.

8. The petition is disposed of accordingly. So far as the cost to be paid to the Central Government Standing Counsel is concerned, I quantify the same at Rs. 3,500/-. The same shall be paid to Smt. P.J. Davawala, ld. Additional Standing Counsel.

[K.A. Puj, J.]

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